

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

ASIL HUBLEY,

Plaintiff,

v.

SPOKANE COUNTY JAIL and SCOTT
BAUN,

Defendants.

2:15-CV-00350-SMJ

**ORDER ADOPTING REPORT
AND RECOMMENDATION
AND DISMISSING FIRST
AMENDED COMPLAINT WITH
PREJUDICE**

1915(g)

Magistrate Judge Dimke filed a Report and Recommendation on April 19, 2016, ECF No. 13, recommending Mr. Hubley's First Amended Complaint be dismissed with prejudice for failure to state a claim upon which relief may be granted, and that such dismissal count as a "strike" under 28 U.S.C. § 1915(g). Plaintiff, a prisoner at the Spokane County Jail, is proceeding *pro se* and *in forma pauperi*. Defendants have not been served.

Magistrate Judge Dimke found that Plaintiff had failed to name proper Defendants to this action. *See Nolan v. Snohomish County*, 59 Wn.App. 876, 883, 802 P.2d 792 (1990) ("[I]n a legal action involving a county, the county itself is the only legal entity capable of suing and being sued."). Furthermore, he failed to present facts from which the Court could infer that the only named individual Defendant, Scott Baun, violated Plaintiff's constitutionally protected rights. *See*

1 *LeMaire v. Maass*, 12 F.3d 1444, 1456 (9th Cir. 1993); *Hudson v. McMillian*, 503
2 U.S. 1, 9 (1992); *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

3 There being no objections, the Court **ADOPTS** the Report and
4 Recommendation. The First Amended Complaint, ECF No. 12 is **DISMISSED**
5 **WITH PREJUDICE** under 28 U.S.C. §§ 1915(e)(2) and 1915A(b)(1).

6 Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
7 brings three or more civil actions or appeals which are dismissed as frivolous or for
8 failure to state a claim will be precluded from bringing any other civil action or
9 appeal *in forma pauperis* “unless the prisoner is under imminent danger of serious
10 physical injury.” 28 U.S.C. § 1915(g). **Plaintiff is advised to read the statutory**
11 **provisions under 28 U.S.C. § 1915. This dismissal of Plaintiff's complaint**
12 **may count as one of the three dismissals allowed by 28 U.S.C. § 1915(g) and**
13 **may adversely affect his ability to file future claims.**

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter this
15 Order, enter Judgment, forward copies to Plaintiff at his last known address, and
16 **CLOSE** the file. The District Court Executive is further directed to forward a
17 copy of this Order to the Office of the Attorney General of Washington, Criminal
18 Justice Division. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any
19 appeal of this Order would not be taken in good faith and would lack any arguable
20 basis in law or fact.

21 **DATED** this 9th day of May 2016.

22
23 

24 _____
25 SALVADOR MENDOZA, JR.
26 United States District Judge
27
28